FILED

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NO. _____

In The

Supreme Court of the United States

VICTOR C., ET AL
PETITIONERS / DEFENDANTS
VS.
SAN MATEO COUNTY HUMAN SERVICES AGENCY
RESPONDENT / PLAINTIFF

ON PETITION FOR A WRIT OF CERTIORARI
TO
COURT OF APPEAL OF THE
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

PETITION FOR WRIT OF CERTIORARI

---

in pro per VICTOR M. CATANZARO and
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QUESTIONS PRESENTED FOR REVIEW;

Was appellant's federal constitutional right to due process violated when the juvenile court and the Court of Appeal erroneously interpreted the second prong of California welfare and institutions code section 300, subdivision (c) and section 361, subdivision (c) as permitting the state to adjudicate his daughter to be a dependent of the court and to then remove his daughter from his care because the state could "impliedly charge" a parent with being "incapable" of providing "appropriate" mental health treatment for his child so long as there subsequently appeared to be evidence indicating that the parent had failed to demonstrate sufficient "commitment and perspicacity" to recognize the seriousness of his child's emotional problems and to seek out "appropriate levels of treatment?"

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows;

VICTOR C. – PETITIONER / DEFENDANT
MOLLY C. – PETITIONER / DEFENDANT

SAN MATEO COUNTY HUMAN SERVICES AGENCY
– RESPONDENT / PLAINTIFF

KENDALL C., A MINOR
– REAL PARTY IN INTEREST

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from state courts;

The opinion of the highest state court to review the merits appears at **App. 1-37** to the petition and is unpublished.

JURISDICTION

For Cases From State Courts;

The date on which the highest state court decided my case was **January 28, 2003**. A copy of that decision appears at **App. 1-37**.

A timely petition for rehearing was thereafter denied on the following date: **February 20, 2003**, and a copy of the order denying rehearing appears at **App. 44.**

The date on which the highest state court denied review of my case was on **April 16, 2003,** and a copy of the order denying review appears at **App. 43.**

CONSTITUTIONAL

The jurisdiction of this Court is invoked under 28 U.S.C. section 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following constitutional and statutory provisions are involved:

> 1) The 14th amendment to the United States Constitution provides in pertinent part that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law . . ."
>
> 2) California Welfare and Institutions Code section 300, subdivision (c). It provides that;
>
> Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:
>
> . . .
>
> (c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of

providing appropriate care. No child shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on sincerely held religious belief and if a less intrusive judicial intervention is available.

3) Section 361, subdivision (c) provides, in relevant part, as follows:

A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated unless the juvenile court finds clear and convincing evidence of any of the following:

(1) There is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor or would be if the minor were returned home, and there are no reasonable means by which the minors physical health can be protected without removing the minor from the minor's parents' or guardians' physical custody . . . .

> (3) The minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, and there are no reasonable means by which the minor's emotional healthy may be protected without removing the minor from the physical custody of his or her parent or guardian.

STATEMENT OF THE CASE AND FACTS

- The San Mateo County, California juvenile court found on October 4, 2001, that appellant's teenaged daughter came within the second prong of subdivision (c) of section 300 of the California Welfare and Institutions Code.[1] In so doing it found that that child had no parent capable of providing appropriate mental health care for her. It then removed appellant's child from his care and the care of her mother, doing so pursuant to subdivision (c) of section 361. The juvenile court assumed dependency jurisdiction and removed the child from the care of her parents despite the following undisputed facts:

- The August 15, 2001, petition which the court

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[1] All statutory citations will be to the California Welfare and Institutions Code unless otherwise stated.

had found to be true had alleged that the child had made various allegations of abuse against her parents, including sexual abuse by her father, had alleged that the child had undergone several psychiatric hospitalizations since May 2000, and had alleged that a psychiatric evaluation initiated by the Department after an initial petition had been filed indicated that the child was severely emotionally disturbed and required intensive clinical intervention including placement in a residential psychiatric facility.

- After child had been temporarily hospitalized due to her emotional state, the parents had followed the recommendation of the hospital's psychiatrist and had ensured that she had been continuously provided with therapy through the family's medical insurance provider.

- The child's private therapist had very recently opined that the child no longer needed to have as frequent sessions as she had been having.

- Before it had filed its petition the San Mateo County social services department (the Department) had repeatedly dismissed the teenager's repeated accusations of abuse, including sexual abuse by her father, as unfounded because the allegations had lacked consistency, detail, and certainty, because the allegations had changed and had been exaggerated, depending upon the person to whom the child was talking, and because the child had appeared to be enjoying the attention that she received from her peers when she spoke of the purported abuse.

- Just a few months before filing the petition the Department had agreed that the parents had successfully

completed a voluntary plan. That plan was one in which the parents had agreed to voluntary supervision by the Department as they provided their daughter with the mental health care which she needed. At the conclusion of the voluntary plan the Department had failed to make any suggestions whatsoever as to anything further which the parents should do to assist and/or protect their daughter.

- The child had recanted her accusations of sexual abuse when speaking to her psychiatrist at the Fremont Psychiatric Clinic.

- The child had begun making the accusations soon after she had clandestinely read some letters which her birth mother had sent to her adoptive parents and after viewing a video of a television show which had been broadcast as part of the Frontline news series during the time when the child's adoptive parents had engaged in a legal battle with the child's birth mother over custody.

- Both parents had thought that their daughter was doing much better. The mother was home 99% of the time, had thought that her daughter's self-cutting had decreased significantly, had seen no indication of any bulimic activity, and her daughter had told her that bulimia was something that she could never stand to do. Appellant thought that his daughter was doing very well as she had improved academically, had become a member of the basketball team, and was quite involved in things. He and she walked the dog together for 20 minutes every night, would usually play basketball together every day, and his daughter seemed happier. He had asserted that there were no red-flags, the school

had not contacted them regarding any discipline problem, his daughter had not complained to her parents about any problems in her life, and no one had diagnosed her with major depressive disorder, post-traumatic stress disorder, bulimia nervosa, and/or borderline personality disorder.

- Both parents had said that they were willing to provide the child with whatever sort of mental health treatment she needed. Additionally, since the father was engaged in a successful real estate business, the parents had adequate funds with which to provide whatever therapy or treatment was needed. Furthermore, there was no evidence that the parents were encumbered by any mental defect, mental health problem, or substance abuse problem which prevented them from providing their daughter with appropriate care.

- The juvenile court had concluded that the cause of the teenager's problems was a "mystery."

REASONS FOR GRANTING THE WRIT

1. APPELLANT'S FEDERAL CONSTITUTIONAL RIGHT TO DUE PROCESS WAS VIOLATED WHEN THE JUVENILE COURT AND THE COURT OF APPEAL ERRONEOUSLY INTERPRETED THE SECOND PRONG OF CALIFORNIA WELFARE AND INSTITUTIONS CODE SECTION 300, SUBDIVISION (C) AND SECTION 361, SUBDIVISION (C) AS PERMITTING THE STATE TO ADJUDICATE HIS DAUGHTER TO BE A DEPENDENT OF THE

COURT AND TO THEN REMOVE HIS DAUGHTER FROM HIS CARE BECAUSE THE STATE COULD "IMPLIEDLY CHARGE" A PARENT WITH BEING "INCAPABLE" OF PROVIDING "APPROPRIATE" MENTAL HEALTH TREATMENT FOR HIS CHILD SO LONG AS THERE SUBSEQUENTLY APPEARED TO BE EVIDENCE INDICATING THAT THE PARENT HAD FAILED TO DEMONSTRATE SUFFICIENT "COMMITMENT AND PERSPICACITY" TO RECOGNIZE THE SERIOUSNESS OF HIS CHILD'S EMOTIONAL PROBLEMS AND TO SEEK OUT "APPROPRIATE LEVELS OF TREATMENT."

This court recognized in *In re B. G.* (1974) 11 Cal.3d 679, 688 that a parent's interest in the companionship, care, custody and management of his children is a compelling one, ranked among the most basic of civil rights. In *Santosky v. Kramer* (1982) 455 U.S. 745, 752-757 this court held that the fundamental liberty interest of a natural parent in the care, custody, and management of his child is protected by the Fourteenth Amendment to the United States Constitution, and does not evaporate simply because that parent has not been a model parent.

Under the concept of "due process of law," procedural as well as substantive rights are protected. Procedural due process requires that before a person is deprived of his life, liberty or property, he must be given notice of the proceedings against him (see *Anderson*

Nat. Bank v. Luckett (1944) 321 U.S. 233, 246, *Pierce v. Superior Court* (1934) 1 Cal.2d 759, 762), he must be given an opportunity to defend himself (see *Shields v. Utah Idaho R. Co.* (1938) 305 U.S. 177, 182 and *Gray v. Hall* (1928) 203 Cal. 306, 318), and the propriety of the deprivation must be resolved in a manner consistent with essential fairness (see *Hannah v. Larche* (1960) 363 U.S. 420, 442, and *Galvan v. Press* (1954) 347 U.S. 522, 530). Substantive due process, on the other hand, deals with protection from arbitrary legislative action, even though the person whom it is sought to deprive of his right to life, liberty or property is afforded the fairest of procedural safeguards. In substantive law such deprivation is supportable only if the conduct from which the deprivation flows is prescribed by reasonable legislation reasonably applied, i.e., the law must not be unreasonable, arbitrary or capricious but must have a real and substantial relation to the object sought to be attained. (See *Nebbia v. New York* (1999) 281 U.S. 502, 525, and *West Coast Hotel Co. v. Parrish* (1937) 300 U.S. 379, 391.)

In this case the juvenile court in San Mateo County, California found, pursuant to the second prong of Welfare and Institutions Code section 300, subdivision (c) that appellant's child was suffering serious emotional damage because that child had no parent or guardian capable of providing appropriate care. It did so despite the above-described facts which strongly demonstrated that both parents were not only fully capable of providing their child with appropriate care but they had, in fact, already been providing their child with appropriate care. It further did so despite the

fact that the parents had not been provided with notice and an opportunity to defend themselves against any "implied" charges and, particularly, against charges which might be both "implied" ***after*** the filing of the petition and then deemed to be ***true*** based upon the attitude with the parents displayed ***after*** the filing.

While the California Court of Appeal in *In re Alexander K.* (1993) 14 Cal.App.4th 549, 558-561 (*Alexander K.*) had interpreted the *first* prong of subdivision (c) of section 300 and had reversed the jurisdictional finding in that case, finding that "the Legislature [did not] intend[] to heighten the use and weight of inferences arising in a dependency case so as to pack the normal rules of circumstantial evidence against the parent," no California Court of Appeal had interpreted the *second* prong of subdivision (c) in any published opinion. In its unpublished opinion in this case Division Two of the First District Court of Appeal found that that state was permitted to "impliedly charge" a parent with being "incapable" of providing "appropriate" mental health treatment for their child -- even though the petition itself had failed to state any basis for such a conclusion -- so long as there subsequently appeared to be evidence indicating that the parent has failed to demonstrate sufficient "commitment and perspicacity" to recognize the seriousness of his child's emotional problems and to seek out "appropriate levels of treatment," that "appropriate" level of treatment apparently being, in the mind of the court, involuntary psychiatric institutionalization. The Court of Appeal further interpreted that second prong to permit the state to both find jurisdiction over a child and to

remove that child from the parent's custody based upon evidence indicating that those "implied" and subjectively-determined allegations were true. It therefore denied appellant's attack upon the constitutional sufficiency of the petition, the sufficiency of the evidence to support the jurisdictional finding, and the sufficiency of the evidence to support the dispositional removal order. Those interpretations were incorrect and the juvenile court and Court of Appeal's erroneous construction of subdivision (c) resulted in appellant being deprived of his federal constitutional right to both procedural and substantive due process.

It is well-settled in California that dependency jurisdiction may not be properly assumed absent some form of abuse, neglect, or exploitation. (See, e.g., section 302[2], *In re Matthew C.* (1993) 6 Cal.4th 386, 391 at fn. 5, and *In re Marilyn H.* (1993) 5 Cal.4th 295, 306.) It is also well-settled that since "parenting is a fundamental right, . . . [it may be] disturbed only in extreme cases of persons acting in a fashion incompatible with parenthood." (*In re Carmaleta B.* (1978) 21 Cal.3d 482, 489.) There is no question that these rules apply to subdivision (c) of section 300. As the Senate Select Committee on Children and Youth/SB 1195 Task Force, observed, Child Abuse Reporting Laws, Juvenile Dependency Statutes, and Child Welfare Services (January 1988) p. 7:

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[2] That section states that the intent of dependency proceedings is to protect children who are "currently being physically, sexually or emotionally abused, being neglected, or being exploited."

> [a]bsent parental abuse or neglect, [mentally ill minors] are not well served by the child welfare system and parents of mentally ill minors should not be subject to the juvenile court's intervention because that generally implies parental unfitness.

(Senate Select Committee on Children and Youth/SB 1195 Task Force, observed, Child Abuse Reporting Laws, Juvenile Dependency Statutes, and Child Welfare Services (January 1988) p. 7.) Moreover, as the Court of Appeal in *Alexander K.*, *supra*, 14 Cal.App.4th at p. 558 pointed out, the legislative task force which was involved in the 1987 revision of the dependency statutes stated that the reasons for revising section 300 was

> to provide more clear-cut guidance to social workers and judges regarding the types of situations which the Legislature considers abusive or neglectful.

It found that

> [g]reater specificity was needed in order to ensure more uniform application of the law throughout the state and to ensure that court intervention does not occur in situations the Legislature would deem inappropriate.

(*Id.* at pp. 558-559.) Thus the legislative history confirms an unmistakable intention to narrow the

grounds upon which children might be subject to juvenile court jurisdiction. (*Id.* at p. 558, citing *In re Rocco M.* (1991) 1 Cal.App.4th 814, 823.) Indeed, as the California Supreme Court concluded in *In re Roger S.* (1977) 19 Cal.3d 921, 930 that

> ***[n]either the state, nor the parent,*** has an interest in committing a child to a state mental hospital for care and treatment if the child is not in need of treatment or ***if treatment can be provided without so drastically curtailing the freedom of the child.***

(Emphasis added.)

Given the fact that the diagnosis of mental illness involves *substantial* uncertainty, with professionals in the area often having *divergent* views upon the subject, and upon the fact that the possibility of mistake is significantly greater in mental illness situations than in physical illness situations (see *Roger S.*, *supra*, at p. 929), it is a deprivation of a parent's constitutional right to due process to employ a statute such as subdivision (c) of section 300 and subdivision (c) of section 361 to impose jurisdiction upon a child and to remove that child from the custody of her parents by deeming the parent's failure to institutionalize their child to be neglect under the circumstances described above. Furthermore, where, as here, the state has not provided the parent with adequate notice of the charges against him so that he may defend against them, but, instead, the

state has permitted charges to be "implied" after the fact by the behavior of the parent after the filing of the petition, the state has violated the parent's constitutional right to due process.

The parent's constitutional right to due process is extremely important given the fact that it is the allegations in the petition which frame the problems sought to be remedied by the reunification services provided, with those services acting as a yardstick by which the parties and the court can measure the parent's progress towards reunification. If the petition is constitutionally infirm, the jurisdictional findings, the dispositional removal findings, the reunification plan, and the subsequent hearings involving determinations regarding the parent's progress towards reunification will be infected by the error.

Since the petition failed to inform appellant that he might be obligated to prepare a defense based upon his own speculation as to what sort of allegations the state might be entitled to consider to be "implied[]" in its charging document, and since appellant was never notified that jurisdiction might be asserted based upon his failure to demonstrate that he currently possessed the "commitment and perspicacity" "to recognize the seriousness" of his child's needs and that he was continuing to "seek appropriate levels of treatment," he was deprived of his constitutional right to notice and was severely prejudiced thereby.

CONCLUSION

For the reasons described above, petitioners/appellants request that this court grant review and settle these extremely important questions of law.

Respectfully submitted,

_____

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_____

Molly E. Catanzaro, in pro per

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Filed **01:28-03;**

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT
DIVISION TWO

A097294 (San Mateo County Super Ct. No. 69081)

In re KENDALL C., a Person
Coming Under the Juvenile Court Law.

SAN MATEO COUNTY HUMAN
SERVICES AGENCY,
Plaintiff and Respondent,
v.

VICTOR C. et al.,
Defendants and Appellants.

Victor C. (Victor) and Molly C. (Molly), the adoptive parents (hereafter parents) of Kendall C., appeal from orders of October 4, 2001, establishing dependency and psychiatric care for her (Welf. & Inst. Code, § 300, subd. (c); all undesignated section references are to that code) and November 9, 2001 (§ 388), authorizing psychotropic medication for her. We affirm, rejecting claims of deficient pleading and proof of jurisdiction, removal findings and evidence, reunification plan, visitation, limitation of parental control over educational decisions, and authorization of the medication.

BACKGROUND

Kendall will be 18 years old next August 4, making this an unusually late-brought dependency. The circumstances surrounding it relate in part to her infant adoption by Victor and Molly, an event that sparked litigation and national attention. The adoption was one of several featured in a PBS Frontline television program, "Desperately Seeking Baby," about private adoptions. It first aired in March 1987, and a videotape copy (the Frontline tape) the parents kept in their home, along with old letters from the birth mother to Kendall (whom she called "Sadie"), were discovered and first seen by Kendall at age 12 or 13. She had long known that she, like younger sister Regan, was adopted but knew little more. The tape was not moved into evidence below but was viewed by the judge and witnesses and considered as a possible source of Kendall's emotional problems. The tape depicts the birth mother having agreed during pregnancy to have Victor and Molly adopt Kendall, Kendall's placement with them right after birth

and then, months later, the birth mother changing her mind and seeking return of the child. It covers litigation up to a trial court order returning the child and then an appellate challenge by the parents. It includes footage of the parents and interviews with the birth mother and grandmother.

The parents ultimately prevailed and, except for a period of separation during the adoption contest, kept Kendall and raised her. By their testimony, she returned to them with some regressive behaviors and fears but then went on to be happy and well adjusted.

Records of the San Mateo County Human Services Agency (agency) show the agency first became involved through referrals from May 1999 through November 2000. Kendall repeatedly claimed physical and sometimes sexual abuse by Victor, but social workers deemed the allegations unfounded or, in one instance, inconclusive. Kendall's accounts were vague, exaggerated, shifting, and denied by the parents and Regan. The parents cooperated and got counseling. Kendall seemed emotionally immature and to enjoy the attention the referrals brought. She said she did not consider the parents to be hers and once made claims after having threatened to make accusations if she did not get her way in a dispute at home.

In November 2000, after Kendall had begun cutting herself and been hospitalized several times with thoughts of suicide, the parents entered a voluntary case plan with the agency that included family counseling and mental health treatment for Kendall. The agency deemed the plan satisfied and closed it in early March

2001, although a required mental health examination was never done, an evaluation by staff at the parents' health plan (Kaiser) having decided that it was not needed.

Four hospitalizations-none initiated by the parents-preceded a fifth that started this dependency in July 2001. The parents testified that the first was a one- or two-day stay at Chope initiated in May 2000 by San Mateo police when Kendall made accusations (apparently of abuse) at school. No follow-up treatment was recommended or sought. Victor explained that Kendall told them she had not meant what she said, and they "really didn't want to focus on it or make her overly aware of the results of making accusations." The second was four or five days at Mills-Peninsula initiated by Burlingame police when Kendall made more "accusations" at school. After this the parents got weekly counseling for Kendall with someone recommended to them. A third hospitalization, three days at Children's House in Redwood City, came when the counselor reported to the agency that Kendall had threatened to harm herself; the counselor told the parents that she did not feel she had the capacity to deal with Kendall. The parents went to Kaiser about getting Kendall into a program and met with people from "CPS" who seemed satisfied with approaching Kaiser. Kendall got individual counseling twice a week with Tracy Eddington from Kaiser and, Victor thought, was "doing very well" until her admission to Fremont Hospital, when a psychiatrist named Nayak recommended continuing through Kaiser. During an ensuing voluntary case plan, they kept Kendall in therapy with Eddington,

although less frequently. When Kendall was hospitalized the fifth time on July 12, 2001, she had last seen Eddington in May and had another appointment scheduled for July.

The precipitating event was a claim of ongoing sexual and physical abuse made by Kendall on July 12, 2001 (unspecified further dates are in that year). An original petition filed on July 16 alleged sexual abuse by Victor (§ 300, subd. (d)) consisting of current molestation, including sexual intercourse in April (D-l), molestation going back to ages three or four, also including sexual intercourse (D-2), and molestation when she was nine years old (D-3). On July 17, Kendall, then at San Mateo General Hospital, was detained, and a psychological evaluation was ordered for her. On July 25 she told social worker Anita Wilhelmi that she was terrified to go home and, if forced to go, would kill herself by slitting her wrists. She lamented that her adoptive mother did not love or hug her and that no one ever believed her reports of abuse.

On July 30, on an agency application backed by a request from an evaluating physician at St. Mary's Medical Center, a juvenile court referee authorized use of the drugs Remeron, Ativan and Effexor. Unfortunately, social worker Wilhelmi (who would later claim unfamiliarity with the request forms) had erroneously indicated in her supporting affidavit that there was no opposition, and Victor's counsel, before Judge Marta Diaz on August 3, claimed lack of notice and that Victor was "paranoid over the situation." The judge accordingly rescinded the order.

The psychological evaluation, written on August 10 by psychologist Robin Press, addressed the question "whether Kendall exhibits symptoms in her behavior and on test findings that are consistent with a history of sexual molestation," and he concluded that she did, although cautioning that he could not "conclusively determine" whether there had in fact "been a history of sexual or physical abuse." He wrote: "I found her to be a credible individual, but I can also be fooled. In summary, I can testify on the existence of certain personality traits that are commonly identified among victims of sexual and physical abuse but I am not competent to testify to the 'truth' or 'falsity' of Kendall's claims of sexual abuse." Kendall claimed incest beginning at age three, sexual abuse continuing "almost every night" by age 11 or 12, and a most recent beating and rape occurring on July 10. She said no one believed her, that she wanted to kill herself because she didn't deserve to live, and "ruined too many people's lives by reporting the incest" but "would sooner cut herself or kill herself than hurt anyone else out of anger." She thought daily of "taking aspirin and Tylenol then slitting her wrists." She knew about her contested adoption but "had no recollection of this chaotic and tumultuous time period in her early life." She related having begun vomiting daily after her November 2000 hospitalization, doing so less frequently afterward and now, with her latest hospitalization (now at McCauley's Neurological Institute (McCauley's)), having a "sharp increase." She said she was depressed and had begun self-mutilating during middle school. From his interviews and tests, Press diagnosed her with major depressive disorder

(single episode, severe without psychotic symptoms), post-traumatic stress disorder (PTSD), bulimia nervosa (purging type), and borderline personality disorder (provisional). Deeming her "severely emotionally disabled" and in need of intensive clinical intervention, he recommended placing her in a long-term, residential psychiatric facility. Returning her to her family at this time, he wrote, would "guarantee an exacerbation of extreme distress, anxiety and depression. Kendall remains a high risk for self-mutilation and suicide." She needed "protection and ongoing psychological intervention in order to experience a reduction in her symptoms."

On August 15, the agency filed an amended petition (the petition) that alleged serious emotional damage (§ 300, subd. (c)) based on Press's diagnoses and recommendations, Kendall's hospitalizations, and her reports of sexual, physical and emotional abuse (fn. 3, *post);* absent were the sexual abuse allegations from the original petition. An effort to start the jurisdictional hearing on August 17 failed when Victor's counsel requested a continuance to meet the new allegations.

When the hearing resumed on August 31 for testimony by Wilhelmi and Press, Victor's counsel announced that he had been fired and "instructed to take no further action in the case." He asked to be relieved and said Victor wanted "to hire another lawyer to get a second opinion." Kendall's counsel objected that Kendall needed prompt resolution and that the parents were trying to manipulate the system; counsel noted a new report addendum that showed Kendall had been moved from McCauley's to Mount St. Joseph's Group Home

(St. Joseph's) 10 days earlier but then returned to McCauley's on a "5150 hold" (§ 5150) following "disclosure of a plan to hang herself and the discovery that she had again cut on herself." Judge Diaz denied the counsel-change request, citing time constraints (§ 352; Cal. Rules of Court [hereafter cited only by rule], rule 1422) and lack of already-retained new counsel. The court heard cross-examination of Wilhelmi by Molly and then heard and denied a *"Marsden"* motion by Victor (see *People* v. *Marsden* (1970) 2 Cal.3d 118) not challenged on this appeal. Insofar as relevant to issues that are raised, Victor complained that his counsel, Gary Merritt (retained, not appointed), was not challenging report statements that Victor had outlined to Merritt in a letter. The court explained, however, that that was precisely the function of the cross-examination of Wilhelmi that Victor was forbidding counsel to do. Father said he could cooperate with counsel, and the court granted a week's continuance for them to confer further.

Also raised at the August 31 hearing was a problem that Kendall had had no medications since the rescinding order of August 3. The addendum by Wilhelmi explained:

"Dr. Fratini, treating psychiatrist, has asked that the previous request for medications be revisited by the Court and the medications be ordered." Descriptions of the drug and a letter from Fratini were referenced, and Wilhelmi wrote: "This is a young girl in serious emotional pain and turmoil. He[r] doctors are recommending that she be provided with antidepressants to assist her in dealing with her pain. For the month that

she was in treatment at McCauley[']s she was without medications and marginally successful until release to a less restrictive environment. Once in placement she was unable to maintain her stability and threatened to end her life. It is Dr. Fratini's recommendation that medication could be helpful to Kendall." Wilhelmi added: "[I) spoke with both Molly and Victor C[.] on August 27, 2001 to inform them of Kendall's return to McCauley[']s and the request to use medications. Neither parent was inclined to feel that medications were appropriate." Related issues were general medical authorization and the release of immunization records. The addendum asked that the agency be empowered under section 369, subdivision (c), to authorize medical, surgical, dental or remedial care for Kendall as might appear necessary. Wilhelmi said she had asked Molly for immunization records so that Kendall could be enrolled in school while at St. Joseph's: "[M]other stated that she would have to find them," but the records had "not been forthcoming." Also, Molly had been asked to sign a medical consent form so that Kendall could be provided routine medical treatment. The form had been presented to the parents by another social worker; the parents had said they would review it but had not yet signed it. "If they do not wish to sign this form," Wilhelmi wrote, "then the Court is respectfully requested to make an order allowing the Director of Child Welfare to sign for such treatment."

Judge Diaz addressed the medication issue, saying: "Kendall is experiencing severe symptoms according to the information that's before this Court, and they desperately want to attempt to deal with her depression and self-destructive behavior by using

psychotropic medication. Kendall is willing to do that. **[PI]**At this time does anyone object to that taking place so we can help this little girl out of this depression bout that she's suffering?" Molly replied that she did not think she had "ever said no" and "only requested additional information" and to "speak to the psychiatrist" for "feedback," but she equivocated, saying she wanted to verify that the descriptions corresponded with the generic drug names. The judge ascertained that Molly had received the request and drug descriptions and, noting that a confidentiality shield limited parental contact with the doctors, urged Wilhelmi to let the doctors know the agency okayed the release of information. Victor resisted, too, his attorney saying Victor did not know anything about the doctors ("He doesn't know if it's Dr. Frankenstein") and had not been able to speak with them. The judge authorized the medication, provided that the drugs sought in a one-page letter from Dr. Fratini were "in fact the generic equivalen[ts] of the drugs attached. I suspect they are, but want verification of that." She added that she understood "the parents' angst," but that she was "not going to withhold medication a child needs and condition it on the doctors doing something I can't compel them to do"; "I'm not going to say I won't sign it unless the doctors agree to meet with the parents, because that would be totally inappropriate." The court also granted general medical authorization.

The hearing resumed on September 7 with testimony from Dr. Press and further testimony by Wilhelmi (this time with cross-examination by Victor's counsel). Press's testimony still concerned, in part, his

report evaluation of whether Kendall's symptoms were consistent with sexual molestation, even though direct allegations of sexual abuse (§ 300, subd. (d)) had been dropped in favor of allegations of serious emotional harm *(id.* subd. (c)) based *in part* on reported sexual abuse.[1]

Press found in Kendall consistent signs of severe psychological distress, with no evident malingering. He said that while a depressive disorder might arise more suddenly, her borderline personality disorder and other problems would have been discoverable by a psychiatrist or psychologist a year before he saw her. As for sexual abuse, he felt she had been sexually abused and was exhibiting signs consistent with PTSD brought on by physical or sexual abuse, and a forensic examination of Kendall related in the addendum was consistent with a history of vaginal penetration. He ruled out the separation during the adoption as a cause. He also felt that her viewing of the Frontline tape, given that she already knew she was adopted, "certainly would have created a lot of confusion in terms of her attachment to her parents," and would have contributed to a sense of fragmented loyalty, but was "not as severe. . . as being exposed to sexual abuse on a regular basis" and would not likely have stirred anger enough "that she would create" reports of abuse. He felt: "It's just--it's not common."

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[1] Oddly, the jurisdictional report prepared after the amended petition continued to list the sexual-abuse allegations of the original petition as additional bases for jurisdiction.

She was "struggling a lot to interpret very strong negative feelings," and was "targeting herself with them at the present time, which is why she's continued to be suicidal and self-mutilating."

Victor and Molly testified on the last day of trial, October 4. A second addendum reported that Kendall was back at St. Joseph's and, while still agitated and depressed, more peaceful and "benefiting from the medications." Staff doctors were concerned about her inability to sleep and were considering sleep medication.

Victor denied all sexual or physical abuse. He said he saw no emotional problems in Kendall until she started making false accusations to others. She was a "big girl," five foot eight inches tall and about 204 pounds, but the parents had never made a point of it. By the end of the voluntary case plan in March 2001, it seemed to him that Kendall had "progressed significantly." In the final five months before this case started, they kept her going to therapist Tracy Eddington, whom Kendall liked. Kendall seemed to Victor to be "doing quite well," and he saw no "red flags," although they did have "a couple visits with her school," where there was concern that she was making the accusations and being disruptive. Victor said he first learned of Kendall seeing the Frontline tape in the summer of 2000, when she took it to her therapist. (Kendall said she first saw it at age 12 or 13.) Before the current hospitalization, Victor had never heard anyone diagnose Kendall with major depressive disorder, PTSD, bulimia nervosa or borderline personality disorder.

Molly testified that she did not believe Kendall's claims of sexual abuse. She had never heard of abuse from Kendall or others until Kendall's statements the year before. She had received no follow-up advice upon the first hospitalization, and when counseling with Eddington began, their main goal was safety since Kendall had begun cutting herself in her freshman year. For safety's sake, Eddington recommended that Kendall not lock the bathroom door. Kendall had never locked it before, but Victor told Kendall, "if she wanted to lock the bathroom door, that was fine," and she did lock it for about a week. Kendall saw Eddington for over a year. Upon completion of the voluntary case plan, Molly had "[n]o" awareness that Kendall was still having trouble, although she conceded that the cutting, which had "stopped significantly," may not have stopped "completely." Molly was unaware of any bulimic activity, and Kendall had once told her that "she could never stand to do that. . . . "

Victor had a successful real estate agency where Molly worked, too. They had financial resources and testified that, without court involvement, they would give Kendall any care she needed and follow the recommendations of professionals.

A letter from Meghan P., a friend of Kendall's since the third grade who had spent a lot of time with her over the years and much time at Kendall's house after school in recent years, said Meghan had never seen Victor hit, shove or yell at Kendall, thought they had a good relationship, had never heard anything from Kendall about sexual abuse, and had spoken with her on the phone twice since July 12th.

In sustaining the petition, the court cited the "prong" of section 300, subdivision (c), "that the parents are unable to provide the appropriate care because of the serious, serious and devastating nature of her emotional and mental situation at the present time." Accepting a time waiver, the court proceeded directly to disposition. It declared the dependency, ordered Kendall into the custody of the agency for placement and therapy, limited parental visitation until Kendall requested it or acquiesced in the suggestion in therapy, and removed parental authority over education decisions.[2] On November 2, the visitation order was modified nunc pro tunc to state that, if Kendall wished to visit with Victor, visits would be supervised by the social worker.

On November 6 and 9, the agency, and then Kendall's own counsel, petitioned for Kendall to receive psychotropic medication, and the court, over the parents' opposition, granted the requests on the 9th.

The parents filed a joint notice of appeal from the orders on November 29. It took a year to complete the briefing, and through the parties' motions for augmentation and/or judicial notice, all of which we grant or have granted (rule 35(e)), we are apprised of some intervening developments. Victor has briefed all of the issues, and Molly joins in that briefing (rules 13(a)(5) & 39) with some augmentation. We also note the pendency of four further appeals in this case (AO98054, AO98844, AO99689 & A1O1O22).

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[2] "THE COURT: I'm going to declare Kendall a dependent child of this Court. Her welfare does require that custody be assumed by the Court, as she is suffering severe emotional damage as indicated by extreme anxiety,

depression, withdrawal, and harmful behavior toward herself and others.

"There are no reasonable means by which her emotional health may be protected without removal.

"Reasonable efforts have been made to prevent or eliminate the need for placement. These efforts include case management, placement services, voluntary services, psychological evaluations, transportation, and counseling.

"A factual basis supporting custody [is] outlined in the amended petition of August 14th.

"She is committed to the care, custody, and control of [CFS] for placement in a suitable approved foster home, relative's home, or private institution. "

"....

"Parents will participate in and successfully complete a program of counseling and psychiatric therapy as directed by Kendall's social worker which should include but not be limited to individual and family therapy.

"Visitation between Kendall and her parents is under the supervision of [CFS]. Visitation is to be with the agreement of Kendall and may be requested through Kendall's attorney.

"The medical staff or any folks at any location where Kendall is placed must be apprised that as soon as Kendall indicates any desire whatsoever to make a phone call, to write a letter, to send a telegram, that those arrangements are to be done forthwith.

"If Ms. Smithson is unavailable, they can be done through the Court or through social services.

"....

"There will continue to be no contact in person, in writing, by phone, or by any means between Kendall and her parents or extended family unless Kendall requests that visit or acquiesces to that suggestion in therapy.

"I do want the therapist to start exploring that and encouraging that. Hopefully Kendall will acquiesce to that so that this family can start the healing process.

DISCUSSION

I. *Sufficiency of Petition*

The parents claim the petition did not adequately state "a cause of action" (i.e., jurisdictional facts) under section 300, subdivision (c), because it failed to show a causal connection between Kendall's problems and their conduct or their inability to provide adequate treatment. The parents also claims that this denied them due process notice and that, if a demurrer below was needed to preserve the issue for appeal, failure of their counsel to do so was ineffective assistance.[3]

The issue is waived. We reject the no-waiver authority of *In re Alysha* S. (1996) 51 Cal.App.4th 393, 396-397 *(Alysha S.),* and adopt the mounting authority that rejects *Alysha* S. and holds that failure to raise pleading deficiencies in the juvenile court waives them for appeal *(In* re *Shelley J.* (1998) 68 Cal.App.4th 322, 328-329 *(Shelley J.);In* re *S.O.* (2002) 103 Cal.App.4th

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"Pursuant to 369(c), the program director of CFS may authorize surgical, medical, or dental remedial care by licensed practitioners if necessary.

"I will also find that since the parents are not available to exercise responsibility for educational purposes, so *[sic]* that responsibility is also removed.

"The case plan is approved. . . .

" And I also want to order that there be family conferencing with Kendall's parents and the medical staff and the social worker so that the family can be kept apprised of what is happening with regards to her therapy. . . ."

3 The petition alleged in statutory language that Kendall "is suffering, or is at substantial risk of suffering, serious emotional damage evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others" "as a result of the conduct of

453, 459-460; see *In* re *Athena P.* (2002) 103 Cal.App.4th 617,626-627; *In* re *James* C. (2002) 104 Cal.App.4th 470, 480-481; but see *In* re *Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134 [citing *Alysha* S. to test pleading but not mentioning waiver or that district's disapproval of *Alysha* S. in *Shelley J.).* Turning by analogy to Penal Code provisions as the Supreme Court has in dependency matters (e.g. *In re Troy* Z. (1992) 3 Cal.4th 1170, 1180-1182), that authority has noted that failure to demur (Pen. Code, § 1004) constitutes a waiver on appeal *(id.,* § 1012). Cases cited by the parents against waiver in criminal cases for failure to state a public offense (see also *People* v. *Chadd* (1981) 28 Cal.3d 739, 756-757 [expired statute of limitations evident from face of information]) are not analogous. This petition did state the "offense," in the statutory language (fn. 3, *ante),* and the parents' complaint that it did not show *how* they contributed to Kendall's problems or *how* they cannot care for her smacks of *uncertainty,* a defect that is always waived by failure to demur *(People* v. *Holt* (1997) 15 Cal.4th 619, 672 [failure to plead underlying felony for burglary]; *People* v. *Jennings*

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the parent or guardian" and "because the child has no parent or guardian capable of providing appropriate care." It then alleged specially: "The child states she has been a victim of repeated sexual, physical, and emotional abuse by her father since she was three years old, and the child has had several psychiatric hospitalizations since May 2000 with the most recent being since July 17, 2001 at St. Mary's Hospital Psychiatric Unit, and psychological evaluation of the child reveals that the child is severely emotionally disturbed, exhibits trauma-induced symptoms, is diagnosed with Major Depressive Disorder, Post-traumatic Stress Disorder, Bulimia Nervosa, and Borderline Personality Disorder, is at high risk for self-mutilation and suicide, and requires intensive clinical intervention and placement in a residential psychiatric facility."

(1991) 53 Cal.3d 334, 356-357 [failure to specify offense date]).

Alysha S. and these parents rely on a no-waiver statute in civil cases for failure to state a cause of action (Code Civ. Proc., § 430.80, subd. (a)), but, better authority notes, that code does not apply in dependency proceedings unless expressly made to apply *(Shelly J, supra,* 68 Cal.App.4th at p. 328). While the dependency scheme incorporates sections 469 et seq. of the Code of Civil Procedure governing variance and amendment of pleadings (§ 348; *David B.* v. *Superior Court* (1994) 21 Cal.App.4th 1010, 1017), it does not incorporate the earlier sections governing *objections* to pleadings (Code Civ. Proc., § 430.10 et seq.), and thus clearly renders the Civil Code provision inapplicable. *(In re James C., supra,* 104 Cal.App.4th at p. 481.) Moreover, *Alysha* S. overlooked the need to show prejudice on appeal and thus that, even under the civil case rule it invoked, there is no prejudice from a pleading that fails to state a cause of action if, in the end, sufficient evidence supports the judgment. *(In re Athena P., supra,* 103 CalApp.4th at p. 627.) The real issue, then, is sufficiency of the evidence.

The parents urge an exception for pleadings that may be so deficient as to deprive a parent of due process notice and the ability to mount a defense (see *Shelley J:, supra,* 68 Cal.App.4th at pp. 328-329), but this petition, whatever its more subtle deficiencies for asserted lack of specificity (§ 332, subd. (f)), was more than enough to alert the parents. It impliedly charged that Kendall's problems were in some way caused or aggravated by the parents and/or that they were incapable of providing appropriate treatment (see fn. 3, *ante).*

And where sufficient evidence appears, a parent cannot circumvent waiver by claiming ineffective assistance: "If the [agency] was able to introduce sufficient evidence of jurisdiction, then [a parent's] counsel could reasonably decide not to challenge, the sufficiency of the petition. Such a challenge would have resulted, at best, in an amended petition and, at worst, in alerting the [agency] to the issue. On the other hand, if the [agency] was not able to introduce sufficient evidence of jurisdiction, then trial counsel's failure to challenge the sufficiency of the petition was not prejudicial, because [a parent] can still obtain reversal on that ground. Thus, once again, we need only consider the sufficiency of the evidence at the jurisdictional hearing." *(In re Athena P., supra,* 103 Cal.App.4th at p. 628.)

II. *Sufficiency of Evidence*

"The petitioner in a dependency proceeding must prove by a preponderance of the evidence that the child. . . comes under the juvenile court's jurisdiction. (§ 355.) On review, this court will view the juvenile court record in the light most favorable to that court's order. [Citation]. We may not reweigh or express an independent judgment on the evidence, but must decide only whether sufficient evidence supports the findings of the juvenile court. [Citation.] Issues of fact and credibility are matters for the trial court alone; we may decide only ""'whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trier of fact.' [Citation.]"'' *(In re Amy M.* (1991) 232 Cal.App.3d 849, 859-860.)

Because section 300 contemplates that jurisdiction may be based on any single subdivision *(Shelley J., supra,* 68 Cal.App.4th at p. 330), a judgment must be affirmed if substantial evidence supports jurisdiction under any subdivision *(ibid.).* By extension, since section 300, subdivision (c) disjunctively allows jurisdiction for a child suffering serious emotional damage "as a result of the conduct of the parent. . . *or who has no parent. . . capable of providing appropriate care,"* the appropriate-care standard is sufficient alone. *(In re Nicholas B., supra,* 88 Cal.App.4th at p. 1136, fn. 11, italics added.) Since the judge here expressly relied on that "prong" (fn. 1, *ante),* we start there. Jurisdiction under that prong exists "when the child is suffering serious emotional damage due to no parental fault or neglect, but the parent or parents are unable themselves to provide adequate mental health treatment." *(In re Alexander K.* (1993) 14 Cal.App.4th 549, 557.)

Clearly, Kendall suffers severe emotional harm, and the parents had the material means to respond to her needs. The question is whether they had the commitment and perspicacity to recognize the seriousness of her needs and seek appropriate levels of treatment, and this is what the court found lacking.

The court acknowledged the parents' love and their desire to attribute Kendall's problems to the transient early loss of her custody during the adoption mess or, later, her having watched the Frontline tape. Press's testimony, however, was that the early separation (of which Kendall had no memory anyway) was insignificant, and the court found that the tape "cut[] both ways." While Kendall's discovery of a second

family might trigger *false* reports of abuse, as the parents urged, the court felt it might also give a child a "sort of permission to finally disclose" *actual* abuse, providing her with some emotional safety for the disclosure. This was supported by Press's testimony which, if focused on sexual abuse, nevertheless acknowledged the dramatic impact of the tape itself. The tape did not persuade the court in "one direction or another."

Rather, the court found "the best evidence" in "the history of [the problem] itself, saying: "[T]he repetitive hospitalizations, the repetitive reports of sexual abuse and of emotional abuse are the proof in the pudding that the family cannot deal with her mental health issues. The proof is that the family couldn't and didn't. Try as [they] may have, it didn't work. Nothing that happened worked. **[PI]** And to go from thinking that everything was proceeding in a productive way to this cataclysmic situation that we find her in now, . . . that indicates . . . . some signals were missed along the way. **[PI]** . . . Whether or not that was neglected because of bad advice from the mental health professionals that the family chose to work with or because of certain blinders being worn, the fact of the matter is that this little girl has serious, serious problems which this family cannot at the present time cope with." The court attributed "no small part" of that inability to cope to Kendall not participating with them "in helping herself get better" but noted that Kendall needed all the strength she could "muster to start a long and laborious road to recovery."

Unlike the parents, we do not construe the court's nothing-worked and proof-in- the-pudding comments as meaning simply "that since the parents had not yet been

able to solve their daughter's mental health problems, they were somehow not capable of doing so in the future" or that the court "attempt[ed] to attribute the child's mental health problems to some sort *of parental fault* . . . ." First, the ruling was not about the parental-fault prong of the subdivision (§ 300, subd. (c)) but the inability-to-provide prong, with no evident confusion on the court's part.

Second, the court's other comments show it was aware that there might ultimately be no complete solution for Kendall's problems, regardless of the efforts made, and thus that inability to provide could not rest just on past failure to *rectify* a problem. The court also mentioned possible "bad" professional advice (implying Eddington, the health plan counselor) and Kendall's own reticence as factors contributing to the past lack of success, and the court was aware that the parents had completed the voluntary case plan just five months before the agency intervened again, suggesting that the agency itself might have missed "signals," too. The question for us is whether substantial evidence supports a finding that, notwithstanding other possible contributing factors, there was an inability to reasonably recognize and provide for Kendall's needs. We hold that there was.

The clearest answer is sexual abuse. If Victor did sexually abuse Kendall, then his inability to recognize the seriousness of, and work toward proper treatment for, Kendall's mental health problems is so palpable that no further discussion is necessary. The agency suggests that there may have been confusion below about whether the amended petition, while failing to repeat the original

petition's sexual abuse allegations (§ 300, subd. (d)), was nevertheless meant to supplement rather than supplant the original allegations. The parents argue that the agency abandoned entirely any efforts to prove sexual abuse, but we are not altogether convinced by their argument. Even the amended petition premised both prongs of subdivision (c) jurisdiction on allegations that "[t]he child states that she has been a victim of repeated sexual, physical and emotional abuse by her father since she was three years old" (fn. 3, *ante).* The *truth* of those statements remained relevant, though not essential, to jurisdiction. The court's reliance on inability to provide rather than the parental-fault prong may *suggest* that the court was not convinced of the truth of Kendall's sexual abuse claims, as may its comment that, lacking "information about the mental health history of the natural parents, [Kendall's problem] is a mystery.. . ." A categorical rejection of sexual abuse, however, is not *necessarily* implied. The court said in its "cuts both ways" comments, for example, that Kendall's viewing of the Frontline tape may have triggered disclosure of actual sexual abuse, "assuming arguendo, that she was sexually abused by her father and that she never mentioned anything to her mother, because some kids don't." The door was left open.

In any event, we find substantial evidence for the ruling even if we assume for sake of argument that no sexual abuse occurred. If Kendall only said or believed it had occurred, it was still something the parents had to respond to given her suicide threats and self-mutilation. Since the court referred to bulimia as "a very secret disease," we assume further for argument's sake that the

court may have believed the parents' claims of ignorance that Kendall was engaged in any bulimic behavior, behavior that apparently began in late 2000 after a year of counseling. The court spoke of "blinders being worn" by the parents, and that finding is supported. Kendall was hospitalized four times and carried out repeated self-mutilation while claiming abuse. During this time of patently serious emotional illness, the parents utilized only the services of a recommended or health plan counselor, and when that did not prevent a further hospitalization, completed a voluntary case plan through the agency, during and after which they still stayed with Eddington as Kendall's individual counselor. This was so even though, by Victor's own testimony, one counselor had "admitted" after a hospitalization "that she didn't have the capacity to deal with Kendall." At the end of the four-month plan, Kendall's self-mutilation had "significantly' but not "completely' stopped, according to Molly, yet they took this to mean that further or different intervention was not needed and eventually let the sessions nearly stop, the last one before Kendall's July 12th removal having been in May of that year. The parents claimed that, until the current dependency intervention, they had never heard Kendall diagnosed with major depressive disorder, PTSD, bulimia, or borderline personality disorder. This posed a credibility problem that we cannot second-guess on appeal. The court was entitled to question Victor's startling claim that, in the course of four hospitalizations, he did not recall "any of the doctors or hospitals that [Kendall] went to expressing an opinion as to what they thought she was-how she was suffering." This implied that they

never bothered to ask a professional what was wrong, and the testimony from Press was that all of his diagnoses, except perhaps the depressive disorder, should have been manifest and discoverable by a psychiatrist or psychologist even a year before the dependency intervention.

The parents suggest that even if the court felt they had lacked perception before the current diagnoses, it was error not to take them at their word that they would follow through with professional advice from now on. We find no error in the court's implicit rejection of those assurances. For years they had done little in the face of circumstances that would have alarmed most parents, and their evident failure to secure or demand any professional explanation after four hospitalizations, suicide threats and self-mutilations strongly suggests an inability to make Kendall's interests a priority. The record in this case to the point of the jurisdictional finding, moreover, circumstantially supports that impression, for it could reasonably be construed as showing that the parents readily and consistently placed their own issues and interests over the long-term interests of Kendall. We need mention only a few instances and stress that, while the parents will certainly argue in each instance that contrary inferences should be drawn, it was for the trial court, not this court, to resolve all conflicting reasonable inferences *(In re Rocco M.* (1991) 1 Cal.App.4th814, 820; *People v. Holt, supra,* 15 Cal.4th at p. 668).

The jurisdictional report shows that Victor did not agree to be interviewed until three weeks after the detention, saying he wanted to have the interview

recorded so that he would not be "misquoted, " as he believed he had in the past. Then at the jurisdictional hearing, already continued once for his counsel to prepare better against amended allegations, was stalled by Victor again, necessitating a further continuance, when he instructed his counsel not to proceed. This was over protest by Kendall's counsel that the parents were "trying to manipulate the system" while Kendall lingered in "a state of considerable distress," an addendum showing that she had just cut and planned to hang herself and that she had been without desperately needed medications for a month. A" *Marsden"* inquiry disclosed no ineffective representation or irremediable breakdown in the relationship but, rather, a fixation by Victor on challenging petition and report statements (statements that counsel would have challenged by cross-examination that day) and on "lies" by the social worker as to his drug consent (a problem the court had already remedied by rescinding the drug authorization). The court had to empower the agency to authorize routine dental and medical care for Kendall when the parents either delayed or would not sign a consent form. Even after Kendall planned to hang herself, they did not feel that the medications requested by the doctors were appropriate, and the court had to order them so that Kendall could be stabilized.

We agree with the agency that developments it cites from *after* the jurisdictional finding also reinforce the impression of the parents as preoccupied with their own issues or even standing in the way treatment for Kendall, but we cannot agree that those matters are relevant to our review of the jurisdictional findings. A

judgment must stand or fall on the circumstances existing when it was made. *(In re Brittany H.* (1988) 198 Cal.App.3d 533,554; *Vons Companies, Inc.* v. *Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444,fn. 3; *People* v. *Keligian* (1960) 182 Cal.App.2d *771, 774-775.)* This court commonly tracks the progress of a dependency through augmentation or judicial notice, ordinarily to watch for mootness *(In re Raymond* G. (1991) 230 Cal.App.3d 964, 967, fn. 2; rule 35(e)), for changes affecting prejudice from error found *(In re Arturo A.* (1992) 8 Cal.App.4th 229, 243-246) or, in a rare case, to make new findings that dispose of the case *(In re Elise K.* (1982) 33 Cal.3d 138, 145,149-151, conc. opn. by Bird, C.J.). The post-judgment events relied upon by the agency do not fall within those categories, and our examination of the events appearing at the time of judgment is enough to affirm the jurisdictional finding.

III. Removal Findings

To order removal, a court must find by clear and convincing evidence (CCE) one of the circumstances described in section 361, subdivision (c). Here the court found, as shown in a box checked on the order, that Kendall suffered "severe emotional damage, or would suffer damage if returned home, indicated by extreme anxiety / depression / withdrawal / untoward aggressive behavior toward self or others, and there are no reasonable means by which the child's emotional health may be protected without removing the child nom the physical custody of the child's parents" (§ 361, subd. (c)(3); see also oral paraphrase at fn. 2, *ante).* The wording is correct but, as the parents observe, does not expressly mention that a CCE standard is being applied.

The parents say this failure was error and a denial of their due process rights, and that there is no substantial evidence to support the finding.

The substantial-evidence claim is a rehash of points we have already rejected for the jurisdictional finding (part II, *ante),* notably the suggestion that the court should have first tried letting the parents retain custody and place Kendall in a residential psychiatric facility themselves. Our previous discussion, including the court's supported rejection of trust in the parent's ability to put Kendall's interests first, applies here as well. The court also knew that the agency had engaged the parents for four months in a voluntary services plan and that the effort, while deemed satisfactory by social workers at that time, had not borne fruit. (Cf. *In re Jose M.* (1988) 206 Cal.App.3d 1098,1104.)

The failure to expressly recite the CCE standard is not enough to show that the court erroneously applied a mere preponderance standard, as the parents assume. The standard is so finely settled in this context that we cannot hold that a mere failure to recite it was a misapplication of it. The parents cite no case or statutory law requiring an *express* reference to the CCE standard, and general authority holds that when a burden of proof is well established, as it was here, we assume on appeal that duty was regularly performed (Evid. Code, § 664) absent a contrary showing *(Ross* v. *Superior Court* (1977) 19 Cal.3d 899, 913-914 [reasonable doubt]; *People v. Nance* (1991) 1 Cal.App.4th 1453, 1456 [CCE]). The record here is merely silent on the standard. Error is not shown.

IV. *Reunification Plan*

A reunification plan must be specifically tailored to fit the circumstances of each family and designed to eliminate those conditions which led to the jurisdictional findings. A mechanical approach to the plan is not enough. *(In re Dino E.* (1992) 6 CaI.App.4th 1768, 1777.) Failure to formulate an adequate plan may be reversible error *(In re Kristin W* (1990) 222 Cal.App.3d 234, 254), and the parents think that is the case here because the plan did not provide concretely enough for individual therapy for them. Seemingly defeating that argument, they then urge that there was no basis for them to have therapy anyway since they were not *at fault* and had each professed a willingness to do anything required of them (an ironic argument given their appellate zeal in challenging the need for individual therapy).

Whatever their internal inconsistencies, the arguments have no merit individually. First, the need for individual therapy was manifest. Kendall was claiming abuse, that she was unloved, and that she was afraid to go home (see part V, *post).* Even if all of those things proved objectively unfounded (the parents' view), they would need to be explored on all sides if there was any chance of healing and reunifying the family. This is surely what social worker Wilhelmi had in mind when she testified, "Individual counseling and family counseling, I think, is important so that each of them can deal with their own personal issues, and [so] that they can deal with some family issues." We have held (part II, *ante)* iliat parental "fault" is not material and that the record supports an implicit finding that the parents were

not yet ready to put Kendall's interests first, yet another reasonable basis for requiring individual therapy.

As for concrete "tailoring" of the requirement, the parents criticize the court for checking a box stating: "The [] Parents [] Mother [] Father [] Guardian [] Step-Parent are to participate in, and successfully complete, a program of counseling/psychiatric therapy as directed by the social worker to include, but not limited to, as stated in report and/or on record." They first criticize as "mechanical" a failure to check any of the boxes -i.e., for not "saying who it applied to"-but this is petty. They knew they were the "parents," and if the checked box confused them, the court's oral pronouncement, which they ignore, specified that this requirement applied to the"[p]arents" (fn. 2, *ante),*

The parents next complain that the printed form directs *family* therapy "as stated in report and/or record" and that the record shows only an initial plan contemplating family therapy "when individual therapist determine[s] it will be constructive. " The parents disparage this as a "plan-to-make-a-plan at some undefined time in the future when some unnamed, yet-to-be-determined therapist at [some] facility *might* decide that it might be 'constructive' to have family therapy. . . ." The later-stated oral ruling, we note, ordered "a program of counseling and psychiatric therapy as directed by Kendall's social worker which should include but not be limited to individual and family therapy" (fn. 2, *ante),* and while this clarification, uncited by the parents, may not assuage their "tailoring concerns, we find no fatal defect in the plan.

It is difficult to see how-and the parents do not suggest how-therapy could have been more definitely ordered given Kendall's situation at the time of disposition. Thanks in large part to the parents opposition, she had only just begun the drug therapy her doctors deemed essential to stabilizing her so that counseling could be effective, and it is clear from the record, which shows her as fearful and suicidal, that her individual therapy would have to progress considerably before any family therapy could be attempted As detailed in the second report addendum, an assertedly *chance* encounter with Molly at a visit in a park between Kendall and her younger sister and a pet dog had led to Kendall hiding under her desk upon returning to St. Joseph's. There she "lost control" and hit a wall, requiring hospital treatment for an injured hand. She was clearly not ready for family therapy. The agency cites post-judgment records showing that the parents never engaged in their own individual therapy and that their family therapy efforts were a failure. However, we review the plan under the circumstances existing when it was ordered. Also, since we find no error, we have no need to address subsequent events as affecting possible prejudice.

Moreover, the authorities the parents cite provide little support for the *facial* attack they mount; their authorities concern plan deficiencies as relating to later findings that adequate services had been provided *(In re Daniel* G. (1994)25Cal.App.4th 1205,1210- 1217; *In re Dino E., supra,* 6 Cal.App.4th at pp. 1776-1778). Such issues are premature on this appeal. The plan is not shown to be facially inadequate in the circumstances.

V. *Visitation*

Whenever a child is removed from parental custody, the juvenile court is required to provide reasonable reunification services (unless and until a statutory exception is determined to apply), and a normal part of reunification services is visitation between the parents and the child. *(In re Nicholas B., supra,* 88 Cal.App.4th at p. 1138.) The court "may not improperly delegate decisions over visitation to a child's therapist"; similarly, it may not allow visitation to be "dictated solely by the child involved although the child's desires may be a dominant factor." *(Ibia.)* Ultimate supervision and control over visitation must remain with the court, not social workers and therapists, and not the children. *(In re Julie M.* (1999) 69 Cal.App.4th 41,49-51; see generally *In re Chantal S.* (1996) 13 Ca1.4th 196,213-214.) Yet, while visitation is a key element of reunification, the court must focus on the best interests of the child and on the elimination of conditions that led to the juvenile court's finding that the child had suffered, or was at risk of suffering, harm specified in section 300. This includes the possibility of adverse psychological consequences of an unwanted visit between parent and child. *(In re Julie M., supra,* at p. 50.)

The parents see improper delegation in that the October 4 order directed visitation to be "with agreement of the child and requested through her attorney" or, in the oral ruling, "under the supervision of Children and Family Services" and "with the agreement of Kendall and may be requested through [her] attorney." A related order not directly challenged on this appeal was that

there be "no contact in person, in writing, by phone, or by any means between Kendall and her parents or extended family unless Kendall requests that visit or acquiesces to that suggestion in therapy" (fn. 2, *ante).*

We find the improper-delegation issue mooted by intervening changes. The October 4 order stood only briefly, for the court on January 3,2002, granted a section- 388 petition by Kendall, through her counsel, for a no-contact order as to both parents, based on negative visits. Molly has separately appealed that order (AO98054), claiming lack of standing by Kendall's counsel and lack of proper verification. Even if she were to prevail and have the no-contact order reversed, however, it would not revive the October 4 order. An intervening order of August 13,2002, has since granted modification (§ 388) to allow parent visitation once staff at Kendall's treatment site deems it appropriate. We also see from two other appeals still not fully briefed that the parents have each appealed no-contact orders issued on March 19 (AO98844) and July 9 (AO99689) of 2002.

Review of the October 4, 2001, visitation-restrictions is moot, and with actual visitation having occurred since then, the circumstances have also changed.

VI. *Educational Decisions*

A court "may limit the control to be exercised over the dependent child by any parent . . . and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent. . . to make educational decisions for the child shall be specifically addressed in the court order. The limitations

may not exceed those necessary to protect the child." (§ 361, subd. (a).) The court decided, "since the parents are not available to exercise responsibility for educational purposes, . . . that responsibility is also removed." The written order makes a similar finding, citing section 361, that the parents were "not available or appropriate to exercise responsibility for educational purposes . . . . "

The parents urge reversal since the court gave "no reason whatsoever," and they claim there is no evidence that the limitation was *necessary.* On the reasons issue, we question whether a stated factual basis, although statutorily required for removal (§ 361, subd. (d); cf. *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218), is needed to limit control over educational decisions. If it is, however, any error is harmless where it does not appear reasonably probable that findings, if made, would have been in the parents' favor (cf. *In re Diamond H.* (2000) 82 Cal.App.4th 1127,1137), and that is the case here.

The limitation was sought because, as Wilhelmi explained in her first addendum to the report: "The undersigned has asked the mother for immunization records so Kendall can be enrolled in school while at Mt. St. Joseph's. The mother stated that she would have to find them. These records have not been forthcoming." The addendum went on to relate a similar failure of the parents to sign a consent form for routine medical treatment. The parents argue that a *refusal* to comply should not be inferred because the report was vague about how much time elapsed between the request and the addendum's August 30 writing. The language, however, does suggest a significant lapse of time. Also,

neither parent directs us to anywhere in the record where their compliance was assured or shown, and they ignore the inference of refusal arising from their continuing failure to rectify the situation anytime between the addendum and the October 4th order five weeks later.

We review dispositional findings for substantial evidence, contradicted or not *(In re Heather A.* (1996) 52 Cal.App.4th 183, 193), and cannot substitute our own inferences for those drawn below. The removal of control is supported, and a more favorable result does not appear reasonably probable had reasons been stated.

VII. *Psychotropic Medication*

Once a child is judged a dependent and removed from a parent's physical custody: "[O]nly a juvenile court judicial officer shall have authority to make orders regarding the administration of psychotropic medications for that child. . .. Court authorization. . . shall be based on a request from a physician, indicating the reasons for the request, a description of the child's diagnosis and behavior, the expected results of the medication, and a description of any side effects of the medication. . . . " (§ 369.5, subd. (a).) Under that authority *(ibid.),* the Judicial Council has adopted a rule prescribing the procedures for authorization, including the use of a special form (rule 1432.5(c)) and the need for "[a] description of the possible side effects of the medication" (rule 1432.5(c)(D)). Those procedures were evidently followed on August 31 when the court, after an aborted earlier attempt, authorized the use of the drugs Remeron Ativan and Effexor for Kendall.

The parents complain, however, that the post-disposition order of November 9 did not comply, for it did not include a description of possible side effects for the drugs being sought-Trazodone (Deseryl) to help Kendall sleep, and Serzone for anxiety and PTSD. The court stated at the start of a hearing on the matter that she had "reviewed. . . . . the list of any possible interactions, side effects, and the like," and said later at the same hearing that, having reviewed "hundreds of these," "virtually the same side effects appear almost without fail with almost any sort of psychotropic medications." Still, as far as our record shows, the descriptions of side effects accompanying the request all do appear to have been for other drugs.

We think the parents are arguing for argument's sake, for there is no reason to reverse the order. First, since the rule calls for "a description of *any* side effects of the medication" (§ 369.5, subd. (a), italics added) and the parents have not shown that there *are* any side effects from Trazodone or Serzone, they have not shown that error occurred. Second, if it did occur, there is no reason to think it will occur again. The agency says in its brief that any error was due to the request being prepared by Kendall's counsel rather than the agency itself, and the earlier requests submitted by the agency do seem to have complied. Third, as the parents are aware from the rule, any "order for authorization is [only] effective until terminated or modified by court order or until 180 days from the order, whichever is earlier" (rule 1432.5(f)), and this order issued over a year ago. In the year it has taken to brief this appeal, the medication had to be renewed or altered at least twice,

presumably in compliance with the rule. Fourth, we have no reason to believe that Kendall is still taking Trazodone or Serzone. Through the parents' own augmentation and judicial notice request, we have (1) a letter of July 8, 2002, from their medical expert, Justin Call, M.D., reporting that Kendall's current medications were Resperdal, Celexa, Zantac and Flonase, and (2) a 12-month status review report of August 13, 2002, saying she was taking Celexa and Resperidone. Not one of those drugs was involved in the assertedly defective request.

DISPOSITION

The orders are affirmed.

_____

Lambden, J

We concur:

_____

Haerle, Acting P. J.

_____

Ruvolo, J

AO97294

In re KENDALL C., a Person Coming Under the Juvenile Court Law.

Superior Court of The State of California
County of San Mateo
In Session as a Juvenile Court

FINDINGS AND ORDERS

IN THE MATTER OF:	**HEARING DATE:** 10/04/01 at 0900
CHILD NAME	**AGE** **BIRTHDATE**
KENDALL CATANZARO	16 08/04/85
PETITION NO. 69081	

NATURE OF PROCEEDINGS [X] JURISDICTION

PRESENT:

JUDGE: MARTA DIAZ

[X] MOTHER: MOLLY CATANZARO

CLERK: TAMMY MAGILL

[X] FATHER: VICTOR CATANZARO

REPORTER: JANICE SCOTT

CASE S.W.: ANITA WILHELMI PRES.

COURT OFFICER: CLAUDIA WHITMAN

COUNTY COUNSEL: PETER FINCK

ATTY FOR CHILD: JANE C. SMITHSON

ATTY FOR MOTHER: CHARLES T. STOLPE

ATTY FOR FATHER: GARY M. MERRITT

WITNESSES SWORN: Called by Mr. Merrit = Victor Catanzaro Called by Mr. Stolpe = Molly Catanzaro

EXHIBITS ENTERED: per exhibit sheets

Conference held.

Superior Court of The State of California
County of San Mateo
In Session as a Juvenile Court

FINDINGS AND ORDERS

FINDINGS

NH [X] Notice of this hearing has been given as required by law.

CRCSS [X] The Court has read and considered the social study report dated 10-04-01which is admitted into evidence.

APAT [X] After hearing evidence, the Court determines by a preponderance of the evidence, that the allegations of the Petition are true.

PIS [X] Petition is sustained as amended.

CDBS [X] Child is described by Section 300 (C) of the Welfare and Institutions Code.

FORM A

ORDERS

CDOC [X] 1. The child is declared a Dependent Child of the Court.

WCR [X] 5. The welfare of the child requires that custody is assumed by the Court, as

WCRC [X] c. the child is suffering severe emotional damage, or would suffer damage if returned home, indicated by extreme anxiety / depression / withdrawal / untoward aggressive behavior towards self or others, and there are no reasonable means by which the child's emotional health may be protected without removing the child from the physical custody of the child's parents' / guardians'.

REAS [X] 8a. Reasonable efforts have been made to prevent or eliminate the need for placement and these efforts include: as stated in report and / or on record.

FORM: B

FGSSP [X] 10a. The factual grounds to support the findings requiring the assumption of custody are the allegations of the sustained Petition.

CHSA [X] 11. The child is committed to the care, custody and control of the Human Services / Agency for placement in:

CHSAA [X] a. a suitable, approved foster home, relative's home or private institution.

WTD [X] 15. Within thirty days of the date of this Order, Children and Family Services is to submit to the Office of the District Attorney, Family Support Division, a statement, in the form of a Declaration, of money expended or costs incurred on behalf of this child.

PSCPAS [X] 17a.The [ ] Parents [ ] Mother [ ] Father [ ] Guardian [ ] Step-Parent are to participate in, and successfully complete, a program of counseling/psychiatric therapy as directed by the social

worker to include, but not limited to, as stated in report and / or on record.

CPSCAS [X] 18a. The child is to participate in, and successfully complete, a program of counseling psychiatric therapy as directed by the social worker to include, but not limited to, as stated in report and / or on record.

FORM: C

VBC [X] 24. Visitation between the child and the [X] Parents [ ] Mother [ ] Father [ ] Guardian [ ] Step-Parent

VBCA [X] a. is under the supervision of Children and Family Services.

NC [X] 25. There is / continues to be no contact in person, in writing, or by telephone between the child and parents and extended family members unless the child requests such visits.

FORM: D

NAOA [X] 51e. Pursuant to WIC Section 361, the court finds that the parent / legal guardian is not available or appropriate to exercise responsibility for educational purposes, and therefore, such responsibility is removed from the parent / legal guardian.

369C [X] 51h. Pursuant to WIC Section 369c, the Regional Direction of Children and Family Services, San Mateo County Human Services Agency, may authorize such medical, surgical, dental, or remedial care for the above-named Dependent Child, by licensed practitioners, as may from time to time appear necessary.

CP [X] 52. The child welfare services CASE PLAN / is approved.

FFT [X] 59.Other visitation between the child and parents to be with agreement of the child and requested through her attorney.

Visitation between the child and extended family be under the Supervision of C.F.S and all visits to be with the agreement of the child.

Visitation between the child and her sibling be under the Supervision of C.F.S. with supervision to be delegated to the placement staff when deemed appropriate by the Social worker

To be family conferences between parents, medical staff and social workers. Parents to be kept apprised of medication, counseling frequency without going into confidential communications.

FORM G

FOR CLERKS OFFICE USE ONLY

[X] 60. This Matter is continued to 02-14-02 at 2:00p.m. for Dept. 5

[X] e. FR Six Month Review

Dated: 10-04-01

s/Marta Diaz
Marta Diaz
Judge of the Juvenile Court

FORM H

Court of Appeal, First Appellate District, Division Two – No. A097294

S113984

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re KENDALL C., a person Coming Under the Juvenile Court Law.

SAN MATEO COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent,

v.

VICTOR C., Defendant and Appellant.

Petition for review DENIED.

s/George
George, Chief Justice

Supreme Court Filed, April 16, 2003, Federick K. Ohlrich Clerk, Deputy

COURT OF APPEAL, FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 2

In re KENDALL C., a Person Coming under the Juvenile Court Law.

SOCIAL SERVICES AGENCY,
Plaintiff and Respondent,
v.
VICTOR C., et al.,
Defendants and Appellants.

A097294
San Mateo County No. 69081

BY THE COURT:
The petition for rehearing is denied.

Date: Feb 20, 2003 s/HAERLE, J.ACTING, P.J.
HAERLE, J.ACTING, P.J.

FILED Court of Appeal – First App. Dist.
Feb 20, 2003
RON D. BARROW, CLERK
BY:_____DEPUTY